

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1917 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

B N LEMORIYA

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioner

MR N.N. PANDYA for the respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/07/96

ORAL JUDGEMENT

Challenge is made by the petitioner, a Foreman in the Department of Irrigation, State of Gujarat, to the order dated 3-11-1983 under which he was sought to be reverted to the post of Foreman from the temporary establishment to the work charge establishment. Rule was issued in this case on 27-4-1984 and interim relief in terms of para 9(E) was also granted. By the interim

relief the petitioner's reversion from the post in temporary establishment to work charge establishment was stayed, and it was directed that the petitioner shall be paid his salary from the temporary establishment. This interim relief continues till date and the petitioner has continued to work in the temporary establishment.

2. It is not in dispute that the petitioner was appointed as Foreman on probation in the temporary establishment on 2nd November, 1972 and the reversion order has been made after about 11 years. The respondents have not filed reply to the special civil application. One of the contentions raised by the learned counsel for the petitioner is that the order of reversion has been passed without notice to the petitioner. Reversion of the petitioner from temporary establishment to work charge establishment has civil consequences, and as such the counsel for petitioner contended that the principles of natural justice ought to have been followed before making the same.

3. Mr. N.N. Pandya, learned counsel for the respondents is unable to controvert the fact that the order impugned in the writ petition has been passed without notice and without affording an opportunity of hearing to the petitioner.

4. I have given my thoughtful consideration to the submission made by the learned counsel for the petitioner. The order of reversion of the petitioner has been made after 11 years and it will certainly have civil consequences. It is true that the order of reversion of the petitioner is administrative in nature. But when it affects his service conditions, namely, reverts the petitioner from temporary establishment to work charge establishment to work charge establishment, notice was required to be given affording him an opportunity of hearing, before passing the order. The impugned order has not been given effect to as this Court has granted interim relief. Taking into consideration the totality of the facts of the case the order impugned in the petition cannot be allowed to stand.

5. In the result the special civil application is allowed. The order of the respondents dated 3-11-1983 produced at annexure-c to the petition is quashed and set aside. However, it will be open to the respondents to pass fresh appropriate order of reversion of the petitioner from temporary establishment to work charge establishment after giving notice to the petitioner and after affording him an opportunity of hearing. Rule made

absolute in the aforesaid terms. No order as to costs.